

§ 1620.21

(e) Third persons (i.e., individuals who are not in the two groups of employees being compared) who do the extra task as their primary job are paid less than the members of the higher paid sex for whom there is an attempt to justify the pay differential.

§ 1620.21 Head of household.

Since a “head of household” or “head of family” status bears no relationship to the requirements of the job or to the individual’s performance on the job, such a claimed defense to an alleged EPA violation will be closely scrutinized as stated in § 1620.11(c).

§ 1620.22 Employment cost not a “factor other than sex.”

A wage differential based on claimed differences between the average cost of employing workers of one sex as a group and the average cost of employing workers of the opposite sex as a group is discriminatory and does not qualify as a differential based on any “factor other than sex,” and will result in a violation of the equal pay provisions, if the equal pay standard otherwise applies.

§ 1620.23 Collective bargaining agreements not a defense.

The establishment by collective bargaining or inclusion in a collective bargaining agreement of unequal rates of pay does not constitute a defense available to either an employer or to a labor organization. Any and all provisions in a collective bargaining agreement which provide unequal rates of pay in conflict with the requirements of the EPA are null and void and of no effect.

§ 1620.24 Time unit for determining violations.

In applying the various tests of equality to the requirements for the performance of particular jobs, it is necessary to scrutinize each job as a whole and to look at the characteristics of the jobs being compared over a full work cycle. For the purpose of such a comparison, the appropriate work cycle to be determined would be that performed by members of the lower paid sex and a comparison then made with job duties performed by members of the higher paid sex during

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a similar work cycle. The appropriate work cycle will be determined by an examination of the facts of each situation. For example, where men and women custodial workers in a school system perform equal work during the academic year, but the men perform additional duties in the summer months, the appropriate work cycle for EPA purposes would be the academic year. In that instance, the additional summer duties would not preclude the application of the equal pay standard or justify the higher wage rate for men for the period when the work was equal.

§ 1620.25 Equalization of rates.

Under the express terms of the EPA, when a prohibited sex-based wage differential has been proved, an employer can come into compliance only by raising the wage rate of the lower paid sex. The rate-reduction provision of the EPA prohibits an employer from attempting to cure a violation by hiring or transferring employees to perform the previously lower-paid job at the lower rate. Similarly, the departure of the higher paid sex from positions where a violation occurred, leaving only members of the lower paid sex being paid equally among themselves, does not cure the EPA violations.

§ 1620.26 Red circle rates.

(a) The term “red circle” rate is used to describe certain unusual, higher than normal, wage rates which are maintained for reasons unrelated to sex. An example of bona fide use of a “red circle” rate might arise in a situation where a company wishes to transfer a long-service employee, who can no longer perform his or her regular job because of ill health, to different work which is now being performed by opposite gender-employees. Under the “red circle” principle the employer may continue to pay the employee his or her present salary, which is greater than that paid to the opposite gender employees, for the work both will be doing. Under such circumstances, maintaining an employee’s established wage rate, despite a reassignment to a less demanding job, is a valid reason for the differential even though other